Editor's note: Decision vacated and remanded by order dated July 30, 198 -- See 48 IBLA 158A & B below.

EDWARD GOODMAN

IBLA 80-409 Decided June 9, 1980

Appeal from decision of Wyoming State Office, Bureau of Land Management, disqualifying simultaneous oil and gas lease offer W 69482.

Affirmed.

1. Accounts: Payments -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals -- Payments: Generally

   Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is $1,863, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for only $1,836 within the time required, but fails to submit the $27 deficiency within the allowed time.

APPEARANCES: Jerome H. Simonds, Esq., Gay W. Freedman, Esq., Robert N. Steinwurtzel, Esq., Freedman, Levy, Kroll & Simonds, Washington, D.C, for appellant; Harold J. Baer, Jr., Esq., Office of the Regional Solicitor, Department of the Interior, Denver, Colorado.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Edward Goodman has appealed from a decision dated January 24, 1980, rendered by the Wyoming State Office, Bureau of Land Management (BLM), rejecting his oil and gas offer.

Goodman's offer was drawn first priority in the August 1979 simultaneous oil and gas drawing for parcel WY-4549. The offer was rejected because appellant failed to submit the correct rental ($1,863) i accordance with 43 CFR 3112.4-1, but had submitted a payment of $1,836 within 15 days from the date he received notice of rental due from BLM. BLM had specifically sought rental payment for

the offer by notice dated October 5, 1979, via certified mail, in the amount of $1,863. The return receipt reflects that the notice of rental due was received by M. J. Talor, Jr., on October 9, 1979, at 445 Bayshore Boulevard, San Francisco, California, appellant's address of record. On October 12, 1979, BLM received rental on the oil and gas lease in questio in the amount of $1,836. BLM states that at the time the $1,836 payment was received, a receipt for that amount was mailed to appellant. On December 19, 1979, BLM issued a decision disqualifying appellant's lease offer because of failure to submit the correct amount of rental within th time allowed. On December 26, 1979, BLM received appellant's telegram in which he objected to BLM's decision. On December 31, 1979, BLM received appellant's check in the amount of $27, which was submitted with the inte to cure the rental deficiency, and on January 2, 1980, BLM received appellant's "notice of protest." On January 24, 1980, BLM dismissed the protest. On February 19, 1980, appellant filed his notice of appeal.

Appellant submits the following reasons in support of his appeal.

1. Appellant complied fully with 43 CFR § 3112.4-1 as it [sic] submitted the full rental.

2. BLM recognized that Appellant fully complied with 43 CFR § 3112.4-1 as it accepted and cashed both rental payments.

3. BLM abused its administrative discretion by failing to view Appellant's payment as being timely made.

4. BLM's disqualification of Appellant's lease offer was inconsistent with its past practice and thus prejudiced Appellant's preference right to an oil and gas lease.

5. Principles of fairness and equity dictate that BLM's determination to disqualify Appellant's lease offer be reversed.

6. The Department of Interior's regulations dictate that BLM's determination to disqualify Appellant's lease offer be reversed as the nominal deficiency in rental was paid within 30 days of the notice of deficiency.

7. The nominal deficiency resulted from a ministerial error and does not constitute a material failure of consideration.

8. Appellant has demonstrated diligence and good faith in complying with the Department's regulations.

9. Appellant detrimentally relied upon BLM which accepted, acknowledged and cashed Appellant's $1836.00 rental payment without any notification of the deficiency. Consequently, Appellant has incurred irreparable harm.

10. Appellant detrimentally relied upon BLM which accepted, acknowledged and cashed Appellant's $27.00 rental payment, tendered in its [sic] Notice of Protest to cure the nominal deficiency. Consequently, Appellant has incurred irreparable harm.

11. BLM, by waiting over two months from receipt of Appellant's $1836.00 rental payment before notifying Appellant of the nominal deficiency, effectively denied Appellant any opportunity to cure the deficiency within the time limits prescribed by the applicable regulation.

[1] The issue presented is whether appellant's submittal of $1,836 may be deemed to constitute "payment" within the ambit of 43 CFR 3112.4-1 set forth below, or, alternatively, whether the tardy submission of the additional $27, operated to "cure" the deficiency.

The applicable regulation, 43 CFR 3112.4-1, provides as follows:

A lease will be issued to the first drawee qualified to receive a lease upon payment of the first year's rental. Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the entry of the drawee having the next highest priority in the drawing.

Appellant cites 43 CFR § 3103.3-1 in support of his contention that the lease should be awarded as his initial payment was deficient by less than 10 percent of the full rental amount and the deficiency was paid within 30 days of notice of the deficiency.

Appellant's reference to 43 CFR § 3103.3-1 is inapposite because it relates to an over-the-counter filing, which gives specific sanction to protecting the priority of an over-the-counter filer whose advance rental submitted with his offer, is deficient by not more than 10 percent. See also 43 CFR 3111.1(d). 43 CFR 3112.4-1 specifically enumerates the requirements for rental payments for simultaneous offers, and has no corresponding provision for the 10 percent rule.

The 10 percent rule in 43 CFR 3103.3-1 has a rational basis when applied to over-the-counter offers because the offeror often has no

access to plats of survey and thus has no certain method of establishing acreages (and commensuratively rentals) with exactitude. Milton Knoll, 38 IBLA 319 (1978).

Appellant claims that the regulation is set forth in Subpart 3103 which applies to oil and gas leasses in general, and from 1970 to 1973, 43 CFR 3103.3-1 applied to both over-the-counter and simultaneous offers. He states that the addition of 43 CFR § 3112.4-1 in 1973, which pertains simultaneous offers, is irrelevant as the second sentence of section 3103.3-1 was not amended. Therefore, he asserts, section 3103.3-1 provic relief against forfeiture of a preference right, as there was merely a nominal deficiency in rental which was subsequently paid within 30 days c receipt of the notice of deficiency.

BLM properly rejected appellant's offer. The requirements of 43 CFR 3112.4-1 are clear, and the penalty, automatic disqualification to receiv the lease, is explicitly stated in the regulation. This requirement is strictly enforced by the Department. American Petrofina Company of Texas 41 IBLA 126 (1979); Donald E. Jordan (supp.), 41 IBLA 60 (1979); Milton Knoll, supra; Gavina San Diego, 36 IBLA 300 (1978); Susan Dawson, 35 IBLA 123 (1978); aff'd Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980); Charles M. Brady, 33 IBLA 375 (1978); and cases cited.

Appellant labors in vain in his attempt to distinguish Dawson, supra, and Knoll, supra from the case at bar. He argues that the Dawson deficiency was more than 10 percent and the Knoll deficiency was not paid within 30 days of receipt of the notice of deficiency as required by 43 C 3103.3-1. However, that regulation has no application with respect to rental payments for simultaneous oil and gas lease offers, because 43 CFR 3112.4-1 governs the regulation of rental payments for simultaneous oil a gas lease offers, and it states that: "Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due."

43 CFR 3103.3-1 has not been applicable to simultaneous oil and gas lease offers since the regulations for simultaneous offers were amended i several respects, effective September 17, 1973, by Circular No. 2348, whi published in the Federal Register of August 17, 1973 (38 FR 22230). Section 3112.4-1, eliminated the requirement that the advance rental must be submitted with the simultaneous filing. Duncan Miller, 19 IBLA 133 (1975).

Appellant states that he is in compliance with the regulations, and that they do not require the payment of full rental.

Payment of money is delivery by the debtor to the creditor of the amount due. Bronson v. Rodes, 74 U.S. (7 Wall.) 229, 250 (1868).

Payment is generally understood to be a discharge by a compliance with th terms of the obligation. Stone v. Webster, 144 P.2d 466, 468 (1943).

Therefore, compliance with 43 CFR 3112.4-1 mandates full payment, not partial payment, however minuscule the deficiency. In the case of Milton Knoll, supra, the deficiency was three cents.

Appellant also contends that he has been improperly prejudiced by BLM's failure to apply its informal practice of providing a drawee, who h submitted a deficient rental within 15 days of receipt of a notice of rental due, notification of, and an opportunity to correct, the deficienc citing Susan Dawson, supra, in support of this contention.

Appellant's invocation of Susan Dawson, supra, is inapposite. Though the facts reflect that BLM accepted checks after the 15 day deadline mandated by 43 CFR § 3112.4-1, the Interior Board of Land Appeals held that:

> In a number of previous decisions involving late payment of advance rentals for Federal oil and gas lease offers, this Board has upheld strict application of the 15-day deadline set forth in 43 CFR 3112.4-1, supra. See, e.g., Jack Koegel, 30 IBLA 143 (1977); Carma M. Pooley, 29 IBLA 304 (1977). While we note that the check received October 25, 1977, was doubtless a negotiable instrument in the amount of $1,281 it was, nevertheless, received after the October 11, 1977, deadline, supra. Failure to make timely rental payments compels rejection of an offer to lease. Koegel, supra; Pooley, supra. Duncan Miller, 17 IBLA 267 (1974), John Oakson, 13 IBLA 80 (1973).

Notwithstanding appellant's allegations, and the factual situation in Dawson, supra, BLM is not required by law to give notice of deficient rental due, or an opportunity to correct the deficiency. As the Court of Appeals for the District of Columbia noted in a case involving drawings f noncompetitive leases:

> The history of the Administration of the statute furnishes compelling proof * * * that the human animal has not changed, that when you determine to give something away, you are going to draw a crowd. It is the Secretary's job to manage the crowd while complying with the requirement of the Act. Regulation 192.43 is the Secretary's effort in this direction. [1/]

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1/ This regulation has since been redesignated 43 CFR 3112.4-1.

Thor-West Cliff Development, Inc. v. Udall, 314 F.2d 257, 260 (D.C. Cir. 1963).

Because BLM's Wyoming State Office must process tens of thousands of oil and gas lease offers and issue hundreds of leases each month, it woul be unreasonable to expect that each submission by each applicant is entitled to instantaneous analytical review of its sufficiency immediatel upon its arrival. When money is received in connection with a specific lease offer, it is put under accounting control, a receipt is issued, the money is deposited in an "unearned" account, and the record noted. It ma not be until the offer is reached in due course for adjudication that a discrepency is noted.

Appellant asserts that BLM's failure to consider its rental as being timely submitted was an abuse of its administrative discretion granted to it by 43 CFR § 1821.2-2(g), which states:

> (g) When the regulations of this chapter provide that a document must be filed or a payment made within a specified time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:
> (1) The law does not permit him to do so.
> (2) The rights of a third party or parties have intervened.
> (3) The authorized officer determines that further consideration of the document or acceptance of the payment would unduly interfere with the orderly conduct of business.

As noted above, 43 CFR 3112.4-1 states that: "Rental must be receive in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due." The rights of a third party or parties are involved. As stated by the Court Appeals for the Tenth Circuit in Ballard E. Spencer Trust, Inc. v. Morton 544 F.2d 1067, 1070 (1976): "[T]he only difference between the entries i the order in which they are drawn. The applications are considered to ha been simultaneously made. Giving an unqualified first-drawn entrant additional time to file does infringe on the rights of the second-drawn qualified offer." See also Zenith S. Merritt, 46 IBLa 24 (1980).

Although appellant indicates that the original submittal of $1,836 an the subsequent payment of $27 should have been returned to him when found to be deficient, moneys are not returned until final

administrative disposition of the case. This practice preserves the application and the rights of the applicant during the appellate process. He could have recovered the money at any time by withdrawing his offer. See John J. Nordhoff, 24 IBLA 73 (1976).

For these reasons we find that appellant's failure to remit the required rental within the time allowed by 43 CFR 3112.4-1 disqualifies h to receive the lease. We find further that an evidentiary hearing before an administrative law judge pursuant to 43 CFR 4.415 would serve no usefu purpose, as there are no relevant facts in dispute, and appellant's reque for such hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appeal from is affirmed.

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Edward W. Stuebing
Administrative Judge

We concur:

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Douglas E. Henriques
Administrative Judge

_____
Anne Poindexter Lewis
Administrative Judge

July 30, 1980

IBLA 80-409	:	48 IBLA 152
	:	
EDWARD GOODMAN	:	Oil and Gas
	:	
	:	W 69482
	:	
	:	Vacated and Remanded

ORDER

On June 9, 1980, this Board issued its decision in the above-captione appeal, affirming a decision rendered by the Wyoming State Office, BLM, c January 24, 1980, rejecting Edward Goodman's first priority simultaneous oil and gas (SOG) lease offer W 69482 for failure to submit the correct rental payment in accordance with 43 CFR 3112.4-1.

Instead of submitting the requisite rental fee of $1,863, Goodman submitted payment of $1,836 within 15 days from the date he received noti from BLM of the rental due. After having issued a decision on December 1 1979, disqualifying Goodman's lease offer, BLM received his check on December 31, 1979, in the amount of $27 which was submitted with the inte to cure the rental deficiency. However, this payment was not considered timely filed and Goodman appealed the decision to this Board.

In affirming the decision of the Wyoming State Office, the Board hel that with respect to such lease offers, compliance with 43 CFR 3112.4-1 mandates full rental payment, not partial payment even though the difference is minuscule (48 IBLA 156).

In the continuing opinion of this Board, the decision correctly expresses the application of the law and regulations in the circumstances described.

However, the Director, BLM, has now petitioned the Board to vacate it decision and to remand the case to the Wyoming State Office for readjudication for the reason that, because of a land status error by tha office, the true factual circumstances were not accurately reflected by t case record which was then before the Board.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Board's decisio styled Edward Goodman, 48 IBLA 152 (1980), is hereby vacated, and the cas is remanded to the Wyoming State Office for readjudication.

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Edward W. Stuebing
Administrative Judge

We concur:

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Douglas E. Henriques
Administrative Judge

_____
Anne Poindexter Lewis
Administrative Judge

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